

**TAB 12**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

\_\_\_\_\_ X  
THE CITY OF HUNTINGTON, : Civil Action  
Plaintiff, : No. 3:17-cv-01362  
v. :  
AMERISOURCEBERGEN DRUG :  
CORPORATION, et al., :  
Defendants. :  
\_\_\_\_\_ X  
CABELL COUNTY COMMISSION, : Civil Action  
Plaintiff, : No. 3:17-cv-01665  
v. :  
AMERISOURCEBERGEN DRUG :  
CORPORATION, et al., :  
Defendants. :  
\_\_\_\_\_ X

BENCH TRIAL - VOLUME 18  
BEFORE THE HONORABLE DAVID A. FABER, SENIOR STATUS JUDGE  
UNITED STATES DISTRICT COURT  
IN CHARLESTON, WEST VIRGINIA

MAY 26, 2021

1 require the suspension of all orders or sales of other  
2 controlled substances to that customer?

3 **A.** If the question is all, the answer would be no.

4 **Q.** And, in fact, you testified to that very point when you  
5 were a government official, didn't you?

6 **A.** Yes.

7 **Q.** You're not aware of any company or regulator who has  
8 ever run Masters Exhibit A with a due diligence assumption  
9 to any set of data at any point in time, correct?

10 **A.** That's a correct estimate, Your Honor. I'm not aware  
11 if someone did not.

12 **Q.** There's no general acceptance you can point me to for  
13 Method A with its due diligence assumption, whether it's by  
14 distributors, regulators or academics, correct?

15 **A.** That is a correct statement, Your Honor.

16 **Q.** The DEA has never conducted this exercise of applying  
17 your Method A to identify diversion, correct?

18 **A.** That's a correct statement, Your Honor.

19 **Q.** In fact, you've told me it wouldn't be a valid exercise  
20 for the DEA to attempt to use your Masters A to identify  
21 diversion, correct?

22 **A.** And apply the assumption, that would be a correct  
23 statement. I believe I testified before that if, after the  
24 ruling by the DC appellate court, I may be tempted to use  
25 the Masters six-month evaluation if I was still working. I

1       **Q.**   And you can't point me to any generally accepted  
2       methodology for identifying and reporting suspicious orders  
3       that ignores entirely what the medical community is doing in  
4       terms of increased legitimate prescriptions, true?

5       **A.**   That's a correct statement.

6       **Q.**   Okay. Are you -- are you aware that doctors in  
7       Huntington and Cabell County were making the decision to  
8       prescribe more and more? I'm going to write doctors on  
9       here. More and more prescription opioids?

10      **A.**   Yes. The charts that were used today would indicate  
11      that.

12      **Q.**   How would they indicate that?

13      **A.**   Well, the more drugs that are being dispensed are  
14      pursuant to a prescription.

15      **Q.**   You get the prescription, that goes up, and then the  
16      distribution goes up, correct?

17      **A.**   That's correct. No other way for those charts to  
18      increase without prescriptions.

19      **Q.**   No other way, right?

20      **A.**   That's correct.

21      **Q.**   Okay. And so -- I apologize. I don't think I asked  
22      this, but let me be sure I did. Method B does not adjust  
23      threshold levels at all based on whether doctors are making  
24      the judgment to legitimately prescribe more or less  
25      prescription opioids, correct?

1       **A.**    That's correct.

2       **Q.**    So, this pre-dates that Southwood decision we just  
3           talked about that the Masters decision says was the first  
4           articulation of the do not ship requirement, correct?

5       **A.**    I'd agree with that statement, Your Honor.

6       **Q.**    All right. Let's look at this letter predating that  
7           first articulation of the do not ship requirement. Would  
8           you go with me to the second page, please? If we look at  
9           the second paragraph, Mr. Rannazzisi writes, DEA recognizes  
10          that the overwhelming majority of registered distributors  
11          act lawfully and take appropriate measures to prevent  
12          diversion. Did I read that correctly?

13      **A.**    You read it correctly.

14      **Q.**    Here's my question, sir. At this time, when Mr.  
15          Rannazzisi said that the overwhelming majority of registered  
16          distributors act lawfully and take appropriate measures to  
17          prevent diversion from before this time period, before 2006,  
18          is there any distributor you can point me to that blocked  
19          every order it reported to the DEA?

20      **A.**    I'm not aware of that, Your Honor.

21      **Q.**    Switching gears. There's not a specific record  
22          retention requirement under law for federal diligence files,  
23          correct?

24      **A.**    It doesn't -- in the Federal Register, it doesn't  
25          specifically speak to due diligence files.

1 Q. It doesn't say how long they need to be maintained,  
2 correct?

3       **A.**    No. I believe that's one of the areas of the  
4           maintenance of effective control is to prevent diversion to  
5           keep those records to document your decisions and your  
6           actions, but it doesn't specifically say that, Your Honor,  
7           anywhere in the federal regulations.

8 Q. There are specific recordkeeping requirements for some  
9 types of documents, right?

10       **A.**     Yes, there are. They are a part of what's used to  
11           control and to guide the -- keep the closed system intact,  
12           required records.

13 Q. Just not for diligence files, correct?

**A.** There is not -- doesn't speak to due diligence files.

15 MR. SCHMIDT: Okay. Let's -- I have one more  
16 small topic I can start. I'm not done. I've got more to  
17 ask, but I can do one more small topic, Your Honor, or I can  
18 --

19 THE COURT: We've got seven minutes before your  
20 sand runs out of the glass here.

21 MR. SCHMIDT: I think I can get it done in the  
22 seven minutes. If not, I'll pick up tomorrow.

23 Could we put back up the demonstrative? And could we  
24 go to Page 7?

25 BY MR. SCHMIDT: